IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CIVIL REVISION No.191 of 2006.

Date of decision : 29.8.2006.

Dalip Singh and another .....Petitioners

versus

Sadhu Singh and others .....Respondents

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Gurnam Singh Nagra, Advocate
for the petitioners
Mr.Amit Rawal, Advocate
for respondent Nos.1 to 4.

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ORDER

HEMANT GUPTA, J. (oral)

Challenge in the present revision petition is to the order dated 28.11.2005, passed by the First Appellate Court, whereby an application filed by the petitioners for amendment of the plaint so as to correct the errors of calculations in respect of the land in dispute, was declined.

The suit filed by the plaintiffs has been decreed in appeal. In appeal, the plaintiffs-respondents filed an application to correctly describe the calculation of shares of the parties in the land, in the head note and in the plaint. The learned First Appellate Court has declined the said amendment on the ground that in view of the amended provisions of Civil Procedure Code, such application cannot be entertained and that it is not the case of the petitioners that amendment sought to be incorporated was not within their knowledge.

It is contended on behalf of the learned counsel for the petitioners that the plaintiff is not to lead any evidence if the amendment is allowed as evidence has already been led and the amendment is necessitated on account of errors of calculation.

Learned counsel for the respondents has vehemently argued that such amendment has been sought at the appellate stage although objections in respect of calculation were raised in the year 1999, still further the appeal was pending before the First Appellate Court for more than 2 years when the present application has been filed. It was also pointed out by the learned counsel for the respondents that the amendment at this stage is beyond the period of limitation and will provide a new defence to the defendants.

After hearing the learned counsel for the parties, I am of the opinion that the order passed by the First Appellate Court declining the amendment in the plaint suffers from patent illegality.

Though there is delay in moving the application for amendment of the plaint, but the fact that there are errors in calculation while describing the land in dispute, could not be disputed. The petitioners have sought amendment on the ground of errors in calculation. The objection was raised by the defendants in the written statement. Therefore, for mere delay in seeking amendment, the defendant can be compensated with costs. However, the amendment cannot be declined as the amended pleadings will enable the Courts below to pass an effective decree in respect of the issues raised between the parties.

It is needless to say that consequent to the amendment of the pleadings, the defendants shall be entitled to file written statement and raise such plea as is permissible under law. Since, it is the case of the plaintiffs that no evidence is required to be led even if the amendment is to be allowed. But if the defendants want to file amended written statement or to lead any evidence on the basis of amended pleadings, it may be allowed by

the learned Court. The learned First Appellate Court shall permit the defendants to lead such evidence, as may be considered appropriate by the Court.

In view of the above, the order passed by the First Appellate Court dated 28.11.2005, is set aside. The petitioners are permitted to amend the plaint as sought for, subject to payment of Rs.3000/- as costs. On payment of such costs, the defendants will be permitted to file written statement and thereafter the Court shall proceed further in accordance with law.

The revision petition stands disposed of accordingly.

(HEMANT GUPTA)
August 29, 2006. **JUDGE**

**mohinder*